

**ORIGINAL**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )

Review of the Commission's )  
Rules and Policies Affecting the )  
Conversion to Digital Television )

MM Docket No. 00-39

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**COMMENTS OF THE  
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## EXECUTIVE SUMMARY

The National Association of Broadcasters has joined with other broadcasters to file Joint Broadcasters Comments on the issues raised in the Commission's *Notice* to review the progress of the conversion of our nation's television system to digital television technology and to "ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest." NAB here takes the opportunity to file separate comments as well, to express specific views on the progress of the DTV transition and on actions we believe the Commission must take for the transition and the Congressionally-mandated recovery of spectrum to succeed as planned.

The Commission's *Notice* recites as an initial matter that "[f]or the most part, this conversion is progressing, and television stations are working hard to convert to digital television pursuant to the construction schedule we established in the *Fifth Report and Order*." We agree. The station build-out is impressive, continuing and full speed ahead. The *Notice* then seeks comment on issues requiring resolution "to ensure that this progress continues and that potential sources of delay are eliminated."

For NAB's part, we believe the Commission's *Notice* misses the mark in the issues it presents as surely as the Commission has demurred from taking the actions necessary to finish the job it started in setting the DTV transition in motion. Without strong, specific and decisive action by the FCC to eliminate large, looming "sources of delay," this transition will be further hobbled, DTV receiver sales will continue to stall and the Commission, Congressional and Broadcasters goals will not be achieved.

This is not and never has been a “marketplace transition.” It has been a transition designed and set in motion by the FCC and the Congress, replete with timetables, standards and spectrum recovery dates – for only *part* of the television marketplace, the broadcaster part. If the Congressional deadlines for conversion and spectrum recovery are even to be approached, indeed, if the overall DTV transition is to succeed at all, the FCC must ensure that other critical pieces of the DTV puzzle are put into place.

Specifically, the FCC should (1) adopt a procedure (as proposed in the Joint Broadcaster Comments) for processing the backlog of DTV applications and for resolving mutual exclusivities, (2) must mandate inter-operability and other technical standards, (3) must adopt DTV must carry rules, (4) must require DTV receiver performance standards and (5) must require DTV tuners in every new television receiver sold.

The call for DTV receiving capability in every television set (thirteen inches and larger) sold is new. The FCC must squarely face the fact that DTV receivers (*i.e.*, sets that *receive* DTV broadcasts) are not in the marketplace in great numbers, are not being purchased in great numbers and that such slight sales of DTV receivers will not support the timely conversion and recovery of spectrum envisioned by the Commission and Congress. The new statistics from the Consumer Electronics Association show that sales of actual DTV receivers (as opposed to DTV monitors, “DTV-ready” sets, etc.) are paltry and, at this rate, will not reach penetration levels needed to end the transition in time for the conversion and spectrum recovery intended by Congress for 2006.

While sales of DTV receivers no doubt have been slowed because cable subscribers (67% of households) cannot receive the DTV broadcasts available in the top 30 markets (no inter-operability with cable and no cable carriage of available broadcasts), it is simply too late for the

Commission to adopt these measures and rely on them alone to spur sales and move the transition. What is needed is dramatic action from the FCC that will push this transition along quickly.

To this end, NAB urges the Commission to promptly notice and then adopt All Channel Television Receiver Rules which will require that *all television receivers thirteen inches and greater in diagonal screen size be capable of receiving all frequencies allocated by the Commission to television broadcasting, including all NTSC and all DTV channels.*

If the FCC does not do these things now, the DTV transition will remain adrift and likely will stall. If the FCC takes the decisive action here recommended, DTV can indeed succeed and will become the basis of another extraordinary century of American television.

NAB offers these comments and perspectives, in as bold and frank terms as we do, to alert the Commission to the falterings of the transition it has started, with the sincere (and self-interested) hope that this Commission will recognize the importance of the role it must play to, as its *Notice* says, “resolve any impediments to a complete and rapid transition.”

To provide the Commission with as complete a picture as possible of specific problems in the broadcaster build-out, NAB conducted a survey of all commercial television stations asking specific questions about implementation problems. The results of that survey are described below and in a separate report attached as an appendix. (The major findings are highlighted in an executive summary in the report.) A surprising number of broadcasters (38.4% of respondents) reported that government, local and federal, was causing delays in their digital roll-out. Stations cited numerous delays with local zoning or board approvals, the Federal Aviation Administration (“FAA”), local and federal environmental agencies, as well as significant delays in the FCC approval process. In fact, more than one-quarter of stations responding to the survey

experienced some trouble/delay with DTV application processing at the FCC. It is clear from our survey that government inaction can become a real barrier to a smooth and timely digital build-out. Because of the very large numbers of stations yet to build DTV facilities, it is imperative that the Commission take affirmative steps to facilitate local and federal approval processes for the approximately 1,472 stations scheduled to make the transition to digital television in the next 24-36 months.

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**COMMENTS OF THE  
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The FCC has released a *Notice of Proposed Rule Making* to review the progress of the conversion of our nation's television system to digital television technology and to "ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest."<sup>1</sup> The National Association of Broadcasters<sup>2</sup> has joined with other broadcasters to file Joint Broadcasters Comments<sup>3</sup> on the issues raised in the *Notice*. NAB here takes the opportunity to file separate comments as well, to express specific views on the progress of the DTV transition and on actions we believe the Commission must take for the transition and the Congressionally-mandated recovery of spectrum to succeed as planned.

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<sup>1</sup> *Notice of Proposed Rule Making*, In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, at ¶ 1 (released March 8, 2000) [hereinafter *Notice*] (quoting 12 FCC Rcd 12809, at 12856 (1997) ("*Fifth Report and Order*, MM Docket No. 87-268")).

<sup>2</sup> NAB is a nonprofit incorporated association of radio and television stations and broadcasting networks. NAB serves and represents the American broadcasting industry.

<sup>3</sup> Joint Broadcasters Comments, MM Docket No. 00-39, filed May 16, 2000.

The Commission's *Notice* recites as an initial matter that "[f]or the most part, this conversion is progressing, and television stations are working hard to convert to digital television pursuant to the construction schedule we established in the *Fifth Report and Order*."<sup>4</sup> We agree. The station build-out is impressive, continuing and full speed ahead. The *Notice* then seeks comment on issues requiring resolution "to ensure that this progress continues and that potential sources of delay are eliminated."<sup>5</sup>

For NAB's part, we believe the Commission's *Notice* misses the mark in the issues it presents as surely as the Commission has demurred from taking the actions necessary to finish the job it started in setting the DTV transition in motion. Without strong, specific and decisive action by the FCC to eliminate large, looming "sources of delay," this transition will be further hobbled, DTV receiver sales will continue to stall and the Commission, Congressional and Broadcasters goals will not be achieved.

This is not and never has been a "marketplace transition." It has been a transition designed and set in motion by the FCC and the Congress, replete with timetables, standards and spectrum recovery dates but for only *part* of the television marketplace, the broadcaster part. If the Congressional deadlines for conversion and spectrum recovery are even to be approached, indeed, if the overall DTV transition is to succeed at all, the FCC must ensure that other critical pieces of the DTV puzzle are put into place.

Specifically, the FCC (1) should adopt a procedure (as proposed in the Joint Broadcaster Comments) for processing the backlog of DTV applications and for resolving mutual exclusivities, (2) must mandate inter-operability and other technical

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<sup>4</sup> *Notice* at ¶ 1.

<sup>5</sup> *Id.*



standards, (3) must adopt DTV must carry rules, (4) must require DTV receiver performance standards and (5) must require DTV tuners in every new television receiver sold. If the FCC does not do these things now, the DTV transition will remain adrift and likely will stall. If the FCC takes the decisive action here recommended, DTV can indeed succeed and will become the basis of another extraordinary century of American television.

NAB offers these comments and perspectives, in as bold and frank terms as we do, to alert the Commission to the falterings of the transition it has started, with the sincere (and self-interested) hope that this Commission will recognize the importance of the role it must play to, as its *Notice* says, “resolve any impediments to a complete and rapid transition.”<sup>6</sup>

#### **I. BROADCASTERS ARE PROCEEDING APACE OF THE DIGITAL TELEVISION BUILD-OUT SCHEDULE.**

As the *Notice* recognizes, broadcasters are “working hard” and are making substantial progress in meeting the DTV construction schedule set forth in the *Fifth Report and Order* and in Section 73.624(d) of the Commission’s rules.<sup>7</sup> As of May 16, 2000, 134 DTV stations are on air in 49 markets reaching 63% of all TV households. This is indeed a remarkable achievement - - broadcasters are beating even the accelerated schedule set by the FCC. Despite early build-out problems, 84 of the 121 top 4 stations in markets 1-30 are on-air.<sup>8</sup> The remaining top 4 stations in markets 1-30, as the

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<sup>6</sup> *Id.* at ¶ 7.

<sup>7</sup> *Id.* at ¶¶ 1, 4.

<sup>8</sup> The figure of 121 stations includes the top four network affiliates in markets in markets 1-10 (which were required to complete construction by May 1, 1999), the top four

Commission notes, are facing delays due to tower availability and/or local zoning issues, equipment delivery, weather, and scheduling tower crews.<sup>9</sup> In addition, approximately 50 stations in markets 31 and higher are on-air well ahead of their May 1, 2002 build-out deadline and over 316 applicants in all markets have been granted construction permits.<sup>10</sup> Thus, broadcasters are resolving problems and making every effort to ensure a timely transition.

NAB applauds the Commission's goal of assuring "an open proceeding that will allow us to resolve any impediments to a complete and rapid transition."<sup>11</sup> Below, we address specific stumbling blocks broadcasters are facing in completing their part of digital transition.

## **II. BROADCASTERS ARE SUCCESSFULLY WORKING TO OVERCOME PROBLEMS IN THE DTV BUILD-OUT, BUT HAVE BEEN EXPERIENCING SUBSTANTIAL DELAYS PRIMARILY IN LOCAL AND FCC GOVERNMENT APPROVALS.**

The current *Notice* asks whether broadcasters are "able to secure necessary tower locations and construction resources" and what impact "zoning disputes, private negotiations with tower owners, and the availability of tower construction resources"<sup>12</sup> are having on the digital transition. In order to provide the Commission with accurate answers to these and other important questions, in late April, 2000, NAB sent a faxed

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network affiliates in markets 11-30 (which were required to complete construction by November 1, 1999), and KTLA in Los Angeles, CA, which volunteered to complete construction on the accelerated schedule.

<sup>9</sup> *Notice* at ¶¶ 5, 6.

<sup>10</sup> *Id.* at ¶ 5.

<sup>11</sup> *Id.* at ¶ 7.

questionnaire to all 1,113 commercial television stations with known fax numbers.<sup>13</sup>

NAB received completed surveys representing 424 stations, a response rate of 38.1%.

Below is a summary of the survey's findings.

**A. Nearly 4 out of 10 Responding Television Stations Are Experiencing Transition Problems Due To Delays In Local And Federal Government Approvals.**

A surprising number of broadcasters (38.4% of respondents) reported that government, be it local and/or federal, was causing delays in their digital roll-out.<sup>14</sup> Stations cited numerous delays with local zoning or board approvals, the Federal Aviation Administration ("FAA"), local and federal environmental agencies, as well as significant delays in the FCC approval process (detailed below). Where the *Notice* focuses on equipment, weather and crew availability as causes for delay,<sup>15</sup> it is clear from our survey that government inaction can become a real barrier to a smooth and timely digital build-out. Because of the very large numbers of stations yet to build DTV facilities, it is imperative that the Commission take affirmative steps to facilitate local and federal approval processes for the approximately 1,466 stations scheduled to make the transition to digital television in the next 24-36 months.

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<sup>12</sup> *Id.* at ¶ 8.

<sup>13</sup> See Attachment A, "2000 Digital Implementation Survey," by Chris Ely, National Association of Broadcasters, May 2000 [hereinafter *Survey*].

<sup>14</sup> The 38.4% figure represents the combined and unduplicated responses of questions 1 and 5 of the *Survey*.

<sup>15</sup> *Notice* at ¶ 5.

**B. Stations Are Facing Substantial Delays in Obtaining Approvals For Their Tower Build-out.**

Although the Commission states in the *Notice* that “many cases [with tower problems] are being worked out,”<sup>16</sup> more than **one out of six broadcasters** (17.5%) responding to the survey have experienced local zoning or other approval problems and delays when siting a new tower or mounting a new antenna for a DTV signal.<sup>17</sup> Notably, the *mean* delay in tower siting and approval for those stations currently broadcasting in DTV is **20 months**.<sup>18</sup> Furthermore, the percentage of stations experiencing delays in siting or mounting a new tower or DTV antenna markedly increases to twenty-eight percent (28%) for the top 4 affiliates in the top 30 markets.<sup>19</sup>

Twenty-seven stations reported that local zoning or planning board approval delayed their digital transition, ten stations indicated trouble with residential complaints and seventeen stations had issues with federal government agencies (other than the FCC).<sup>20</sup> Specifically, stations in Miami and Orlando have been delayed due to zoning approval for co-located sites. Stations in San Francisco have gotten on-air but still face ongoing litigation over the Mt. Sutro Tower site. And only recently have stations in the top television market, New York City, been successful in their negotiations with the

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<sup>16</sup> *Id.* at ¶ 6.

<sup>17</sup> *Survey* at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

World Trade Center. They hope to complete construction of the shared tower facility by Fall, 2000.<sup>21</sup>

Over half (54.1%) of stations reporting delays in tower/antenna siting have not been able to resolve their local zoning or government problems.<sup>22</sup> Broadcasters in Denver are collectively stalled until their case is resolved.<sup>23</sup> Similarly, stations in Hartford are not on-air because their local application for a re-build of their existing tower has been denied.

While NAB applauds the past efforts of the DTV Strike Force headed by Commissioner Susan Ness in working on tower build-out roadblocks, it is clear that there exists a great need for Commission leadership in “facilitating the deliberations of reviewing entities.”<sup>24</sup> For example, in addition to local zoning issues, five stations situated near the Canadian border have reported delays in the FCC’s receiving final frequency approval from Canada and five stations reported substantial delays in receiving tower height approval from the FAA.

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<sup>21</sup> Similarly, stations in Chicago, after years of effort, have recently secured antenna space on the John Hancock Tower and the Sears Tower. They hope to complete construction by Summer, 2000.

<sup>22</sup> *Survey* at 4.

<sup>23</sup> The Board of County Commissioners of Jefferson County, Colorado has denied broadcasters’ zoning request to construct a multi-user DTV antenna tower. The Lake Cedar broadcasters group has appealed this denial to state court and, as well, has filed a Petition with the FCC asking for preemption of this local action. *See FCC Public Notice*, Petition for Expedited Special Relief and Declaratory Ruling, DA No. 00-764 (released April 10, 2000).

<sup>24</sup> *Notice* at ¶ 6.

**C. More Than One-Quarter Of Stations Responding To The Survey Experienced Some Trouble/Delay With DTV Application Processing At The FCC.**

In addition to local and federal government agency delays, over twenty-seven percent (27.8%) of responding stations report they are experiencing delays in their DTV application processing at the FCC.<sup>25</sup> Twenty-six stations report they have had delays in receiving construction permits, thirty-two stations have had problems obtaining maximization approval and five stations report delays in power request approvals.<sup>26</sup> As the Commission, in its biennial review, assesses its DTV application processing procedures, NAB urges it to recognize the impact that mutually exclusive maximization applications are having in delaying broadcasters' DTV construction.<sup>27</sup>

Moreover, while the *Notice* says that channel assignments are generally outside the scope of this Biennial Review,<sup>28</sup> it is important to note that to date thirty-one stations reported transition delays associated with channel changes.

NAB cautions that, as the number of stations going on-air with DTV increases by over tenfold in the next two years, delays in local and federal government approval for tower and antenna siting and construction are likely to increase. It is the responsibility of the Commission to ensure that broadcasters are not unduly delayed by an uncoordinated approval and permit process while building their towers in accordance with Commission-mandated DTV timetables and specifications.

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<sup>25</sup> *Survey* at 7.

<sup>26</sup> These groups of stations may *not* be mutually exclusive.

<sup>27</sup> NAB endorses the procedure for handling mutually exclusive applications proposed in separate comments. *See Joint Broadcasters Comments*.

<sup>28</sup> *Id.* at ¶ 14.

**D. In Addition to Delays in the Zoning and Permit Approval Processes, Some Broadcasters Are Experiencing Equipment Delays, Financing Difficulties and Shortage of Tower Crews.**

As the Commission is aware, some broadcasters are experiencing delays in receiving the equipment necessary to complete their digital build-out. Slightly more than one-quarter (26.6%) of responding stations currently broadcasting in DTV stated they have experienced delays in acquiring the necessary equipment from vendors.<sup>29</sup> To date, over twenty-two stations report a delay in receiving equipment due to manufacturer backlogs and eight stations cite to a lack of necessary test equipment.<sup>30</sup> NAB cautions that delays by equipment manufacturers could increase exponentially as approximately 1,466 stations place concurrent orders for their equipment.

Only 15.6% of responding stations currently broadcasting in DTV have reported tower construction delays due to the scarcity of tower construction crews.<sup>31</sup> But NAB urges the DTV Strike Force to closely monitor for any such delays as the demand for uniquely skilled workers skyrockets with the build-out of markets 31 and higher.

Finally, more than three-quarters (79%) of responding stations stated they did not have difficulties in securing necessary capital to finance their digital television transition.<sup>32</sup> However, as many stations in markets 31 and higher are still in the initial

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<sup>29</sup> *Survey* at 6.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 4.

<sup>32</sup> *Id.*

planning stages of their 2002 build-out, the number of stations experiencing financing difficulties in small markets may not be fully represented by the NAB *Survey*.

**E. In Total, Almost Half Of The Responding Stations Are Experiencing Delays In Their DTV Conversion.**

As stated above, broadcasters are aggressively converting to digital transmission. However, problems which are beyond the control of broadcasters are leading to across-the-board delays in the DTV roll-out. Over 200 stations (47%) responding to the NAB *Survey* reported experiencing one or more delays in building their DTV facilities.<sup>33</sup> NAB urges the Commission to assume a strong leadership role to ensure that (1) local and federal agencies work in concert to approve new tower and antenna sites, (2) the Commission itself does not become a bottleneck delaying the granting of construction permits and maximization applications and (3) the Commission continues to monitor and evaluate shortages in equipment availability and tower construction crews. NAB is encouraged that, because of this Biennial Review, the Commission and the DTV Strike Force will continue to work closely with the broadcast and consumer electronics industries and with local and federal government agencies to anticipate and resolve implementation issues sure to arise as the bulk of the stations begin building their DTV facilities.

**III. THE DTV CONVERSION CANNOT MEET OR APPROACH ITS CONGRESSIONAL DEADLINE WITHOUT IMMEDIATE AND STRONG ACTION BY THE FCC TO MOVE THE TRANSITION FORWARD.**

The FCC set the DTV transition in motion, armed with clear build-out deadlines for broadcasters, a standardized broadcast transmission scheme, a carefully crafted DTV

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<sup>33</sup> *Id.* at 8.



channel plan and other requirements - - for broadcasters. But the Commission failed to adopt specific measures to insure that other players in this multi-industry transition would respond, and respond in the timeframe mandated by Congress. The FCC assumed, apparently, that the other pieces of the transition would follow in more than due course.<sup>34</sup>

Those pieces are: first, common standards for the myriad technical pieces in the chain of getting DTV signals from broadcast plants into consumer homes, including most particularly DTV/cable inter-operability standards; second, assurance (via must carry obligations for gatekeeper cable systems) that broadcast DTV signals will be available to consumers (to entice them to purchase DTV sets); third, receiver performance standards, to insure that standardized transmission parameters will be met by standardized reception capabilities in receivers; and fourth, strong incentives for consumers to purchase DTV receivers, without which purchases, there is no transition.

The laissez-faire assumption of the FCC that the other necessary pieces to the DTV transition would fall into place, and do so in a timely fashion, by virtue of the workings of the marketplace alone, can now be fairly said to be proved wrong, as discussed below. Marketplace forces are not working except at an extremely slow pace, and show no signs of adequately accelerating in the needed timeframe.

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<sup>34</sup> NAB has warned before that there were missing pieces necessary to a swift and successful transition. *See, e.g.*, MSTV and NAB Reply to Oppositions to Petition for Reconsideration, MM Docket No. 87-268, at 10 (filed July 31, 1997); MSTV/NAB/ALTV joint ex parte letter, CS Docket No. 98-120 (filed February 24, 2000); NAB Reply Comments, CS Docket No. 98-120 at 88 (filed December 22, 1998); NAB Comments, CS Docket No. 98-120 at 45 (filed October 13, 1998); and Letter from Eddie Fritts, President & CEO, NAB and Margita White, President, MSTV to Susan Ness, Commissioner, FCC (December 20, 1999).

**A. The FCC Must Mandate Inter-Operability and Other Technical Standards.**

Three years after the transition was set in motion, there is no convenient way for the 67% of consumers who view television via cable to get a broadcast DTV signal over cable. And there is *no* prospect of doing so in time for the conversion to match the Congressional timeframes. There will not be DTV/cable inter-operable receivers on the store shelves for the 2000 holiday selling season. There is no reasonable prospect for same for the 2001 holiday selling season. There are now, three years later, only incomplete agreements between the consumer electronics industry and the cable industry for DTV/cable inter-operability. There are no common standards that have come from these incomplete agreements. And there is *no* implementation of inter-operable-with-cable DTV product. Why then, should consumers purchase DTV receivers any time soon?

The FCC must act now, as NAB has been urging for years, to mandate inter-operability standards for DTV and cable products, or otherwise secure strong manufacturer commitments for near-term provision of such product. This includes the obvious: consumer-friendly IEEE 1394 connectors on all DTV receivers, set-top boxes and other DTV products; the already agreed-on “cable-ready” characteristics for direct connection DTV receivers; use of the copy protection technology currently available, which should be required to have no blanket ban on use in particular distribution environments. Copy protection issues cannot be permitted to continue to roadblock the DTV transition. The FCC must force a solution here and with other inter-operability issues.

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The FCC has also been lax in promulgating rules for coordination of the digital identity of stations, needed for consumer-friendly tuning of DTV stations. One and a half years ago, NAB urged the FCC to act in this regard, to no avail.<sup>35</sup> We also then urged the FCC to adopt rules to implement for the digital environment statutorily-required closed captioning as well as parental content advisories, neither of which are yet completed. Technology has continued to advance and the FCC should now update its rules as it finally adopts others.<sup>36</sup>

**B. The FCC Must Mandate DTV Must Carry.**

Even if there were a convenient way for consumers to connect DTV sets to their cable systems, they would be unable to receive the many DTV signals now available in at least the top thirty markets, because cable won't talk to broadcasters about carriage of DTV signals. And, still, one and a half years after the FCC forced DTV "volunteers" on air, and one and a half years after it took comments definitively showing that cable has the capacity to carry broadcast signals without dropping cable programming,<sup>37</sup> the FCC is sitting on its proceeding to apply the statutory must carry rules to DTV. By adopting DTV must carry rules, the FCC would ensure that all consumers can access DTV broadcasts and thus that they would have an incentive to participate in the DTV transition, rather than a *disincentive* to do so. Again, why should the 67% of Americans

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<sup>35</sup> NAB Comments, CS Docket No. 98-120, filed October 13, 1998.

<sup>36</sup> See Appendix B for a full description of the technical standards the FCC must address.

<sup>37</sup> See, e.g., NAB Comments, CS Docket No. 98-120, filed October 13, 1998 and NAB Reply Comments, CS Docket No. 98-120, filed December 22, 1998.

who are cable subscribers join the DTV transition by purchasing an expensive DTV set if they can't get DTV broadcasts that are in their market?

NAB again urges this Commission to aid the transition and the achievement of Congress' spectrum recovery by putting DTV must carry at the top of its "must-do" list, instead of waving off comment on the issue, the way it has done in this Biennial Review.

**C. The FCC Must Require DTV Receiver Performance Standards.**

NAB *again* asks the FCC to define and mandate DTV receiver tuner characteristics, so that DTV receivers that consumers might purchase will work as intended (in the FCC DTV allotment planning factors) to receive the DTV signals specified by the Commission. How does it make sense to define and require specific DTV transmission parameters, based on technical assumptions about receiver performance, but not to similarly require that receivers be built to meet and match those assumed performance levels, and still expect to achieve the intended DTV coverage and service goals? This is even more imperative in today's environment where receivers are *not* meeting expected performance thresholds. Again, why should consumers purchase DTV sets given the poor performance reported for sets to date?<sup>38</sup>

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<sup>38</sup> See Caron, Bernard; Wu, Yiyan; Ledoux, Benoit; Kim, Jae H. and Bergeron, Alain; "ATSC 8-VSB Receiver Performance Comparison;" 2000 Broadcast Engineering Conference Proceedings; National Association of Broadcasters; April 8-13, 2000. See also 8-VSB Receiver Evaluation Report, Prepared for MSTV Board of Directors and NAB Board of Directors, September, 1999.

**D. The FCC Must Require DTV Reception Capability in Every TV Receiver.**

Finally, the FCC must squarely face the fact that DTV receivers (*i.e.*, sets that *receive* DTV broadcasts) are not in the marketplace in great numbers, are not being purchased in great numbers and that such slight sales of DTV receivers will not support the timely conversion and recovery of spectrum envisioned by the Commission and Congress. The new statistics from the Consumer Electronics Association show that sales of actual DTV receivers (as opposed to DTV monitors, “DTV-ready” sets, etc.) are paltry<sup>39</sup> and, at this rate, will not reach penetration levels needed to end the transition in time for the conversion and spectrum recovery intended by Congress for 2006.

While sales of DTV receivers no doubt have been slowed because cable subscribers (67% of households) cannot receive the DTV broadcasts available in the top 30 markets (no inter-operability with cable and no cable carriage of available broadcasts), it is simply too late for the Commission to adopt these measures and rely on them alone to spur sales and move the transition. What is needed is dramatic action from the FCC that will push this transition along quickly.

To this end, NAB urges the Commission to promptly notice and then adopt All Channel Television Receiver Rules which will require that *all new television receivers thirteen inches and greater in diagonal screen size be capable of receiving all frequencies allocated by the Commission to television broadcasting, including all NTSC and all DTV channels.*

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<sup>39</sup> Revised DTV Sales Projections and 1999 DTV Sales Figures Demonstrate Link Between Sales and Available Content (April 10, 2000), <http://www.ce.org/newsroom/newsloader2.cfm?d=550> at [1].

The authority for such dramatic action is, of course, the All Channel Receiver Act<sup>40</sup> and the precedent is the All Channel Television Receiver Rules,<sup>41</sup> both of which were adopted to promote and develop UHF frequencies that were then languishing. There, Congress found that the lack of receivers capable of receiving UHF signals was at the root of the problem and that “the only practical and effective means of insuring that such receivers get into the hands of the public is to enact legislation requiring that all sets manufactured are capable of receiving all of the channels allocated for television use.” Congress’ reasoning and solution in the UHF situation apply with equal if not more force to DTV.

In response to arguments against the All Channel Receiver legislation, the Senate Report noted three points, each applicable here as well. One, “this involves a unique situation.”<sup>42</sup> Two, “[w]hile initially there will be an increased cost, it is expected that this will be substantially reduced once the benefits of mass production are fully realized.”<sup>43</sup> And, three, “[i]n any event, the relatively slight increase in cost will be a small price to pay for the unlocking of the 70 valuable UHF channels.”<sup>44</sup> The parallels to DTV are obvious. DTV is a unique transition of the entire television system to digital technology. And, while the price the public will pay to purchase an all-channel receiver

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<sup>40</sup> 47 U.S.C. § 303(s).

<sup>41</sup> First Report and Order, *All Channel Television Receiver Rules (All Channel Act)*, Docket No. 14760, 27 Fed. Reg. 11698 (November 28, 1962).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

will be higher,<sup>45</sup> the costs and prices will fall substantially. And, importantly, the higher costs will be a small price to pay for the “unlocking” of the valuable DTV channels and, in addition, the unlocking of the valuable NTSC channels to be returned to Congress for public benefit and use.

#### IV. CONCLUSION

This FCC has been reticent to impose more regulation on this transition. It prefers to rely on marketplace forces. But, as we said at the outset, this is not and never has been a “marketplace” transition. Nor are its Congressional timelines “marketplace” timing. If they are to be even approached and if the value of DTV is to be “unlocked,” the FCC must take the action here urged. With this action, the transition certainly will move forward, incentives will be provided for all segments of the transition to do their part and the marketplace will be given a fair chance to work. Without such dramatic action, the DTV transition very well may stall, stations will be left in limbo, Congressional deadlines will not be met and DTV may become the UHF of the 1950s and early 1960s. NAB and its member stations have placed their futures on DTV. But broadcasters cannot do it alone. And, so far, all the FCC has done is left us alone.

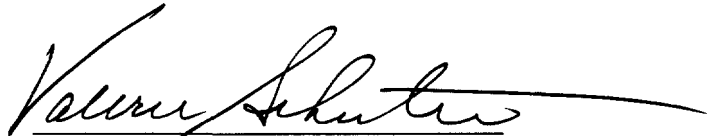
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<sup>45</sup> While the prices of DTV receivers today are steep, most of the price represents the components associated with the larger and higher resolution displays, not the DTV tuner/decoder section. We have already seen dramatic reductions in DTV set top box prices, with the sub-\$1,000 retail price barrier having already been broken by several manufacturers. A small DTV set will be much less expensive than today’s large DTV set prices, and will continue to drop once full production runs are established. And, of course, as with the introduction of any new consumer electronics product, prices will drop dramatically as production increases.

To see the DTV transition succeed and the Congressional recovery of spectrum occur, NAB urges the FCC to take the actions here requested.

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

A handwritten signature in black ink, appearing to read "Valerie Schulte", with a long horizontal flourish extending to the right.

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